

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Implementation of the Satellite Home Viewer)	
Extension and Reauthorization Act of 2004)	MB Docket No. 05-49
)	
Implementation of Section 340 of the)	
Communications Act)	
)	
)	

To: Office of the Secretary
Attention: The Commission

COMMENTS OF SAGA BROADCASTING, LLC

Saga Broadcasting, LLC¹ (“Saga”), hereby files its comments on the *Notice of Proposed Rulemaking* (“NPRM” or “Notice”), FCC 05-24, released February 27, 2005, in which the FCC proposed rules to implement Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”).² Section 202 of the SHVERA creates Section 340 of the Communications Act of 1934, as amended (“Communications Act” or “Act”), which provides satellite carriers with the authority to offer Commission-determined “significantly viewed” signals of out-of-market (or “distant”) broadcast stations to subscribers.

¹ Saga Broadcasting, LLC, is licensee of WXVT(TV), Greenville, Mississippi.

² The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Pub. L. No. 108-447, § 202, 118 Stat 2809, 3393 (2004) (to be codified at 47 U.S.C. § 340). These Joint Comments are timely filed by April 8, 2005.

Background

Section 202 of the SHVERA creates Section 340 of the Communications Act of 1934, as amended (“Communications Act” or “Act”), which provides satellite carriers with the authority to offer Commission-determined “significantly viewed” signals of out-of-market (or “distant”) broadcast stations to subscribers. To place SHVERA in the proper historical context, it is necessary to discuss the Commission’s regulation of cable television in hopes that the Commission will not perpetuate in this proceeding errors made in its regulation of cable television which began, in earnest, with the adoption of the *Cable Television Report and Order*, 36 FCC 2d 143 (1972) (“CATV Order”) and the *Order on Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326 (1972) (“Reconsideration Order”). The CATV Order adopted the standard that an out-of-market network affiliate should be considered to be “significantly viewed” if it obtains at least a three percent share of the viewing hours in television homes in the community and has a net weekly circulation of at least 25 percent.³ For purposes of establishing that a station meets the significant viewing standard the Commission used the 1971 American Research Bureau (“ARB”) “Television Circulation Share of Hours” survey information for those counties in which there was less than ten percent cable television penetration. In those counties where there was ten or more percent penetration, the Commission used

³ The CATV Order provided at footnote 43: “As used here the term net weekly circulation is a measure of the number of households that viewed a station for five minutes or more during an entire week, expressed as a percentage of the total television households in the community. Share of viewing hours is a measure of the total hours all television households in the community viewed a station during the week, expressed as a percentage of the total hours these households viewed all stations during the period surveyed.”

the ARB 1971 "Non-CATV Circulation and Share of Viewing Hours Study for ARB CATV-Controlled Counties." The latter was prepared for the Commission by ARB so that in those counties with substantial existing cable penetration, over-the-air viewing in the absence of cable television could be measured. The CATV Order stated:

Because this data is provided on a county-wide basis only, we recognize that it may not account for variations in viewing levels among communities within the county. There may be other drawbacks in using these surveys, such as rounding of percentages and sampling errors. We nevertheless propose to accept this county-wide information to establish viewing levels for signals in all communities within these counties. In doing so, we note that survey information of this type is generally used by the television industry without differentiating among communities within counties, and that it gives a useable indication of viewing. But the most important consideration in our decision to accept these figures as conclusive is the strong **desirability of certainty**, both from a cable and a broadcast point of view. [footnote omitted] **Otherwise, rather than permitting cable to get moving, we believe there would be controversy in virtually every case. By proceeding in this fashion, we hope to reduce controversy, to provide a base of signals that cable systems will be assured they may carry, and to define areas in which stations will have rights to carriage.** This approach strikes an appropriate balance -- in 1966 we selected the Grade B contour, and in 1968 the 35-mile zone, neither of which was specifically geared to actual viewing, while we now select a precise standard that is much more likely to reflect such viewing. [emphasis added.]

The CATV Order adopted as "Appendix B" a "Table of Significantly Viewed Stations." In the Reconsideration Order, the table of significantly viewed stations was slightly modified, but it was codified as Appendix B to Title 47 C. F. R. § 76.54(a), which, although fraught with errors, has become holy writ. In fact, former Commissioner Robert E. Lee, dissented to the Reconsideration Order:

As to the significant viewing test itself, I have previously made clear that this is a "one-sided" approach that violates common sense and the law. Will the Commission really refuse to let a broadcaster submit a survey that conclusively shows that a signal does not meet the 2% or 3% criterion in the community, whatever it does in the county? Why?

The Commission's reasons all boil down to administrative ease. That is no reason to violate common sense and *Storer*.

Now, the Commission apparently intends to adopt that list of stations as the list of significantly viewed stations for satellite viewing purposes (“SV List”), errors and all. As shown *infra*, the Commission should not again violate common sense and compound its error by adopting the SV List without considering evidence to demonstrate that certain stations should not be on the list.

Request to Correct SV List

At NPRM ¶¶ 11-15, the Commission observed that Section 340(c) of the Act directs the Commission to publish and maintain a unified list of significantly viewed stations, and the communities containing such stations, that will apply to both cable operators and satellite carriers. In accordance with the SHVERA, the Commission compiled a list of stations that were granted significantly viewed status pursuant to the Commission’s cable television rules. The SV List, which is attached to the NPRM as Appendix B, is a list of significantly viewed stations and the communities containing such stations combining the Commission’s original 1972 list of significantly viewed stations granted on a county-wide basis with stations added on a county or community-wide basis over the intervening years.

At NPRM ¶17, the Commission stated its belief that “the SV List appended to this Notice has a high degree of accuracy and, therefore, believe that both cable and satellite carriers may rely on its validity to commence service, consistent with the other requirements set out in the SHVERA and this proceeding, prior to the adoption of a final list. Nevertheless, in light of the length and age of the SV List, we are asking all

interested parties to review the SV List to confirm its accuracy. We seek comment here only about whether the SV List accurately reflects such existing significantly viewed determinations, and not about whether the SV List should be modified because of a change in a station's circumstances subsequent to its placement on the SV List. As discussed below in Section III.A.3, the SHVERA provides for a mechanism for parties to subsequently seek modification of the SV List. Requests to modify the SV List based on changed circumstances must follow this process. [footnote omitted] Parties may file comments in response to this Notice describing the nature and basis of any error, including changes in call sign or community. Such comments must include documentary evidence supporting the requested correction. If we find that a station or community has been listed in error, carriage of such signals in such communities will no longer be permitted pursuant to the significantly viewed provisions pertaining to satellite carriers.”

The purpose of these Comments is to bring to the Commission's attention instances of errors in the SV List with respect to stations in the Designated Market Areas (“DMA”) where Saga operates its television station. As shown herein, these errors were made initially in 1972 with the adoption of the *Cable Television Report and Order*, 36 FCC 2d 143 (1972), and *Order on Reconsideration* since, in most cases, the stations did not place a Grade B or better signal over the counties.⁴

Greenville, Mississippi, DMA

Saga requests that the SV List be modified as follows:

⁴ See Appendix B of the *1972 Reconsideration Order*, 36 FCC 2d 326 (1972).

SV List Page	State/County	Stations on SV List	How SV List Should Be Revised
228	MS/Bolivar	WABG-TV, 6, Greenwood, MS WLBT-TV, 3, Jackson, MS WREG-TV, 3, Memphis, TN (formerly WREC) WMC-TV, 5, Memphis, TN	WABG-TV, 6, Greenwood, MS WLBT-TV, 3, Jackson, MS WMC-TV, 5, Memphis, TN
229	MS/Carroll	WABG-TV, 6, Greenwood, MS WLBT-TV, 3, Jackson, MS WJTV, 12, Jackson, MS +WTVA, 9, Tupelo, MS	WABG-TV, 6, Greenwood, MS WLBT-TV, 3, Jackson, MS +WTVA, 9, Tupelo, MS
230	MS/Grenada	WABG-TV, 6, Greenwood, MS WREG-TV, 3, Memphis, TN (formerly WREC) WMC-TV, 5, Memphis, TN +WTVA, 9, Tupelo, MS	WABG-TV, 6, Greenwood, MS WMC-TV, 5, Memphis, TN +WTVA, 9, Tupelo, MS
231	MS/Humphreys	WLBT-TV, 3, Jackson, MS WJTV, 12, Jackson, MS +WDBD, 40, Jackson, MS WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville, MS	WLBT-TV, 3, Jackson, MS +WDBD, 40, Jackson, MS WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville, MS
233	MS/Leflore	WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville, MS WLBT-TV, 3, Jackson, MS WJTV, 12, Jackson, MS +WTVA, 9, Tupelo, MS	WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville, MS WLBT-TV, 3, Jackson, MS +WTVA, 9, Tupelo, MS
236	MS/Sunflower	WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville, MS WLBT-TV, 3, Jackson, MS WJTV, 12, Jackson, MS	WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville, MS WLBT-TV, 3, Jackson, MS
236	MS/Tallahatchie	WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville,	WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville, MS WMC-TV, 5, Memphis, TN

		MS WREG-TV, 3, Memphis, TN (formerly WREC) WMC-TV, 5, Memphis, TN WHBQ-TV, 13, Memphis, TN	WHBQ-TV, 13, Memphis, TN
237	MS/Washington	WLBT-TV, 3, Jackson, MS WJTV, 12, Jackson, MS KTVE, 10, Monroe, LA WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville, MS	WLBT-TV, 3, Jackson, MS KTVE, 10, Monroe, LA WABG-TV, 6, Greenwood, MS +WXVT, 15, Greenville, MS

Exhibit 1 attached is a survey compiled by Nielsen, that demonstrates that the stations Saga is requesting be deleted from the SV List are not significantly viewed in the counties specified on the SV List. The NPRM (at paragraph 20) proposes to use the methodology in Section 76.54 of the Rules to add a signal or community to the SVList.⁵

⁵ Sec. 76.54 Significantly viewed signals; method to be followed for special showings.

(a) Signals that are significantly viewed in a county (and thus are deemed to be significantly viewed within all communities within the county) are those that are listed in Appendix A of the memorandum opinion and order on reconsideration of the Cable Television Report and Order (Docket 18397 et al.), FCC 72-530.

(b) Significant viewing in a cable television community for signals not shown as significantly viewed under paragraph (a) or (d) of this section may be demonstrated by an independent professional audience survey of non-cable television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes non-cable television homes from each community that are proportional to the population.

(c) Notice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour the cable community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least (30) days prior to the initial survey period. Furthermore, if a survey is undertaken pursuant to the provisions of Sec. 76.33(a)(2)(i) of the rules, notice shall also be served on the franchising authority. Such notice shall include the name of the survey organization and a description of the procedures to be used. Objections to survey organizations or

By analogy, the same data would be used to show that a station does not meet the significantly viewed criteria, and Saga believes the Nielsen data complies with the standards set forth in Section 76.54(b). The original list of communities and stations was based on Arbitron ratings, but, to Saga's knowledge, only Nielsen provides this data at this time. No special survey was conducted, but data was already in existence to demonstrate that the stations to be deleted are not significantly viewed. Exhibit 2 attached is an engineering statement showing that, in most cases, the stations Saga is requesting be deleted either do not place a Grade B contour over the counties specified above, or place a Grade B contour over only portions of the counties.⁶ Therefore, there is a great likelihood that the stations cannot be received easily over the air in these counties, and that they were included on the cable television Appendix B in error. The Nielsen ratings merely confirm the physical difficulty of over-the-air reception.

In light of the foregoing, Saga respectfully requests that the Commission modify the SV list to delete the erroneously-listed television stations noted above, and modify the SV List as set forth in the farthest-right-hand column above.

procedures shall be served on the party sponsoring the survey within twenty (20) days after receipt of such notice.

(d) Signals of television broadcast stations not encompassed by the surveys (for the periods May 1970, November 1970 and February/March 1971) used in establishing appendix B of the Memorandum Opinion and Order on Reconsideration of Cable Television Report and Order, FCC 72-530, 36 FCC 2d 326 (1972), may be demonstrated as significantly viewed on a county-wide basis by independent professional audience surveys which cover three separate, consecutive four-week periods and are otherwise comparable to the surveys used in compiling the above-referenced appendix B: Provided, however, That such demonstration shall be based upon audience survey data for the first three years of the subject station's broadcast operations.

⁶ As depicted on the Expanded View maps, WREG-TV does not place a Grade B contour over any county in the Greenwood-Greenville, MS, DMA. WJTV places a Grade B contour over a small portion of Leflore County and Washington County, MS.

Respectfully Submitted,

SAGA BROADCASTING, LLC

By: 

Gary S. Smithwick
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW - Suite 301
Washington, DC 20016
202-363-4560

April 8, 2005

Exhibit 1



Nielsen
Media Research

**GREENWOOD-GREENVILLE DMA
DIARY ONLY
SIGNIFICANT VIEWING STUDY**

Copyright 2005 Nielsen Media Research

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Subject to Permissible Uses

TALLAHATCHIE COUNTY

					NON- CABLE NO ADS HH			
SOW					1			
INTAB					*11			
					NON- CABLE NO ADS HH	NON- CABLE NO ADS HH	NON- CABLE NO ADS HH	
AVG	'	1	M-S	07:00A-01:00A	WREG	CUME(000)	SHR	
					CUME%			
AVG	'	1	M-S	07:00A-01:00A	HUT			
					51.07	1		

BOLIVAR COUNTY

					NON- CABLE NO ADS HH 3 *26		
SOW					NON- CABLE NO ADS HH CUME%	NON- CABLE NO ADS HH CUME(000)	NON- CABLE NO ADS HH SHR
INTAB							
AVG	'	1	M-S	07:00A-01:00A	WREG	<<	<<
AVG	'	1	M-S	07:00A-01:00A	HUT	58	2

GRENADA COUNTY

					NON- CABLE NO ADS HH 1 *9		
SOW					NON- CABLE NO ADS HH CUME%	NON- CABLE NO ADS HH CUME(000)	NON- CABLE NO ADS HH SHR
INTAB					<<	<<	<<
AVG	'	1	M-S	07:00A-01:00A	WREG		
AVG	'	1	M-S	07:00A-01:00A	HUT	50.23	

SUNFLOWER COUNTY

					NON- CABLE NO ADS HH		
SOW					1		
INTAB					*19		
					NON- CABLE NO ADS HH	NON- CABLE NO ADS HH	NON- CABLE NO ADS HH
					CUME%	CUME(000)	SHR
AVG	'	1	M-S 07:00A-01:00A	WJTV	<<	<<	<<
AVG	'	1	M-S 07:00A-01:00A	HUT	74.95	1	

WASHINGTON COUNTY

					NON- CABLE NO ADS HH		
SOW					1		
INTAB					*26		
					NON- CABLE NO ADS HH	NON- CABLE NO ADS HH	NON- CABLE NO ADS HH
AVG	'	1	M-S 07:00A-01:00A	WJTV	CUME% 8.75	CUME(000) <<	SHR 4
AVG	'	1	M-S 07:00A-01:00A	HUT	82.66	1	

CARROLL COUNTY

					NON- CABLE NO ADS HH		
SOW					1		
INTAB					*13		
					NON- CABLE NO ADS HH	NON- CABLE NO ADS HH	NON- CABLE NO ADS HH
					CUME%	CUME(000)	SHR
AVG	'	1	M-S	07:00A-01:00A	WJTV	<<	<<
AVG	'	1	M-S	07:00A-01:00A	HUT	38.51	1

LEFLORE COUNTY

					NON- CABLE NO ADS HH 1 *15		
SOW					NON- CABLE NO ADS HH CUME%	NON- CABLE NO ADS HH CUME(000)	NON- CABLE NO ADS HH SHR
INTAB							
AVG	'	1	M-S	07:00A-01:00A	WJTV	4	<<
AVG	'	1	M-S	07:00A-01:00A	HUT	57.67	1

Exhibit 2



ENGINEERING STATEMENT

WXVT-TV

GREENVILLE, MS

Saga Broadcasting, LLC licensee of WXVT-TV, a television broadcast station serving Greenville, MS on Ch 15, has requested the preparation of the attached maps. The maps depict the relationship of the Greenwood-Greenville, MS DMA to the Grade B service contours of certain television broadcast stations in markets adjacent to the Greenwood-Greenville, MS DMA.

Specifically, the Grade B contours of the following stations were calculated in accordance with the methodology specified in Part 73 of the Commission's Rules & Regulations and are based on the certified parameters for each station:

WREG-TV, Memphis, TN

WJTV-TV, Jackson, MS

Expanded scale maps are provided for each station in order to more clearly depict the relationship of the contour to counties in the Greenwood-Greenville, MS DMA.

**Certification**

I hereby certify that the foregoing report or statement was prepared by me but may include work performed by others under my supervision or direction. The statements of fact contained therein are believed to be true and correct based on personal knowledge, information and belief unless otherwise stated; with respect to facts not known of my own personal knowledge, I believe them to be true and correct based on their origin from sources known to me to be generally reliable and accurate. I have prepared this document with due care and in accordance with applicable standards of professional practice.

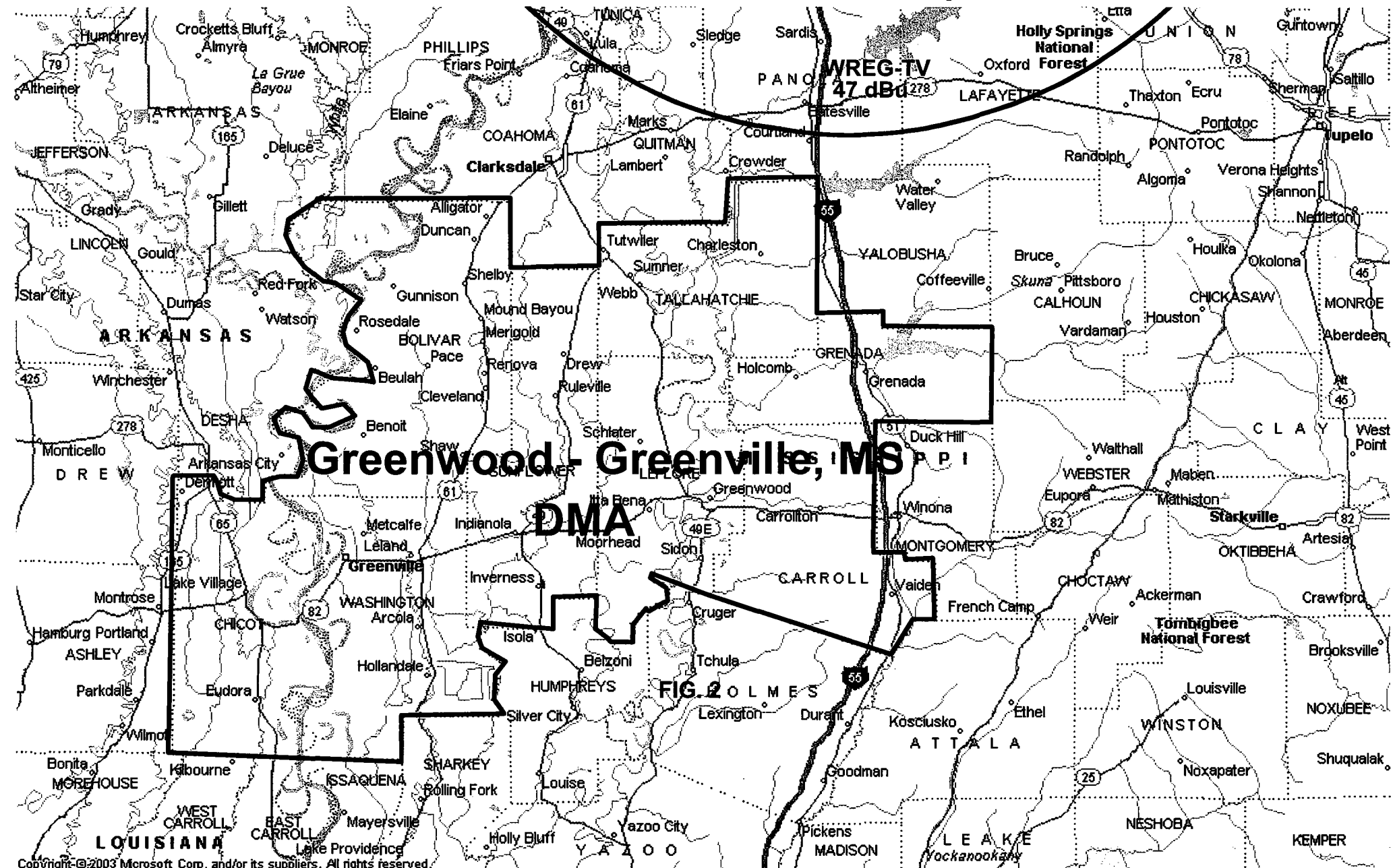
A handwritten signature in cursive script, reading "John F.X. Browne".

John F.X. Browne, P.E.
April 7, 2005

WJTV-TV Grade "B: Contour - Expanded View



WREG-TV Grade "B" Contour - Expanded View



WJTV-TV Grade "B" Contour

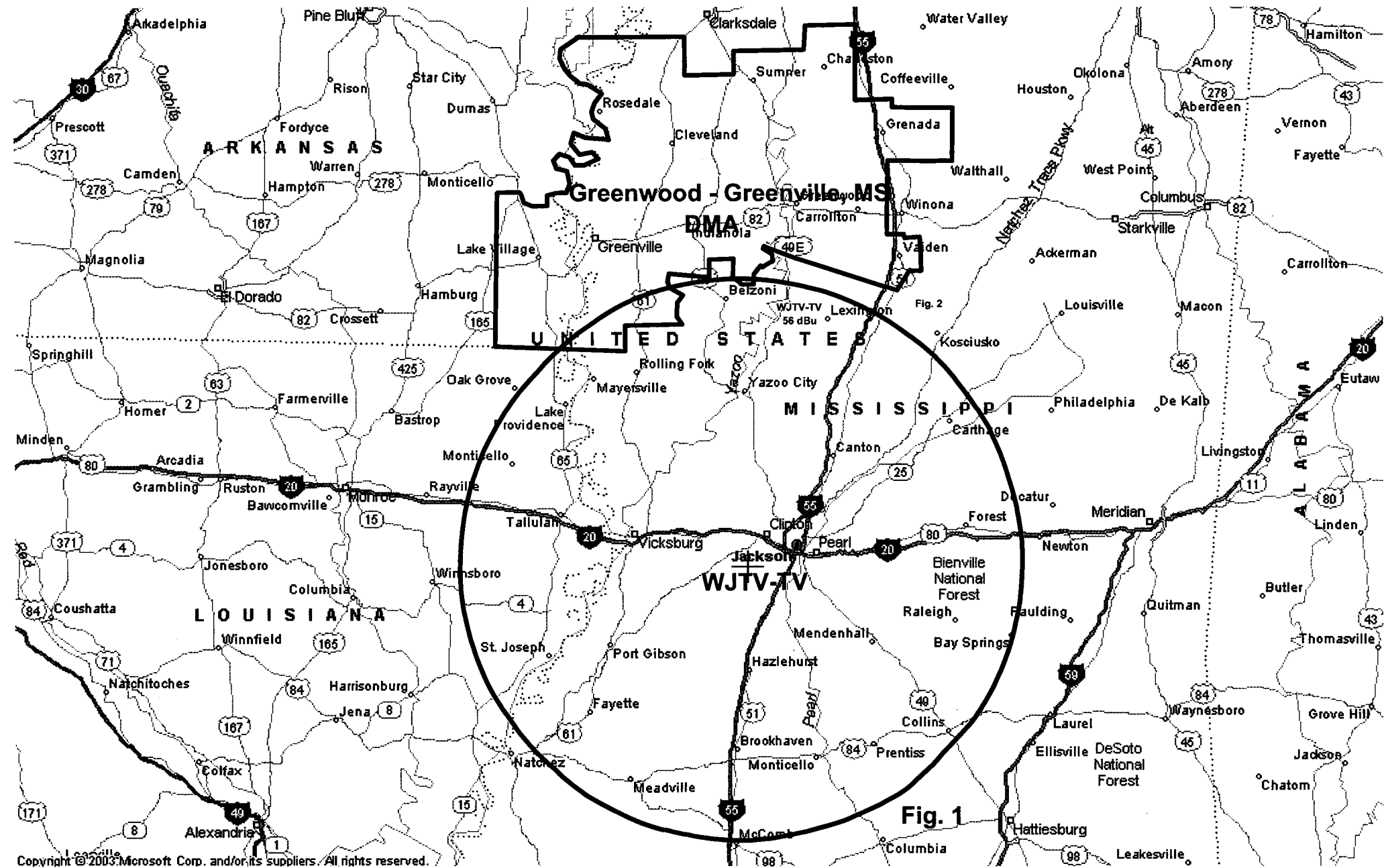


Fig. 1

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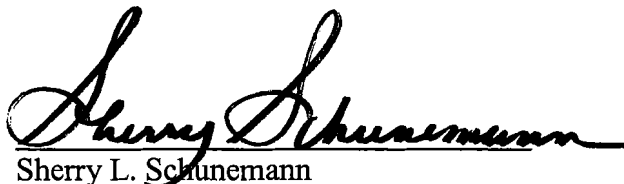
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CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Comments of Saga Broadcasting, LLC" were mailed by First Class U.S. Mail, postage prepaid, this 8th day of April, 2005, to the following:

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New York Times Management Services
Corporate Center 1
International Plaza
2202 NW Shore Boulevard
Suite 370
Tampa, FL 33607

Station WJTV
Media General Communications, Inc.
333 East Franklin Street
Richmond, VA 23219



Sherry L. Schunemann